IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.624 OF 2002

The Commissioner of Income-tax-III, Thane .. Appellant.

V/s.

Shri Meghji K. Vira .. Respondent.

Mr.R.V. Desai, Senior counsel with Ms.S.V. Bharucha i/b. H.D. Rathod for the appellant.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 31ST AUGUST, 2004.

P.C. :

Heard Mr.R.V. Desai, the learned senior counsel for the revenue.

2. The Tribunal considered the matter thus :

> "We have considered the rival submissions carefully. We find that the real issue in this case is not whether the land in question was agricultural or not and accordingly the language of section 2(14) if the Act is of not much help in deciding the issue. The onus to prove that the land is agricultural and accordingly not a capital asset is on the assessee. The issue in this case is regarding the taxability of the transaction holding the same as adventure in the nature of trade and assessing the same as income from undisclosed sources. We find that except the lands sold as detailed in paragraph 4 above, on which capital gains tax has been

paid, no other sale of land has taken place and accordingly the question of treating the transaction as adventure in the nature of trade or taxing it as income from undisclosed sources does not arise. The scheme of assessment of undisclosed income for the block period has a limited purpose of assessing the income, which is undisclosed. An income which is assessable in regular assessment cannot be included in the block assessment. The transaction of sale has already been declared and assessed by the revenue even before the date of search and since no other sale has taken place, the action of the assessing officer in assessing the income in block assessment u/s.158 BC is outside the purview and provisions of Chapter XIV-B of the Act. The assessee has categorically stated that in respect of other lands (apart from the transfer of 0.56 acres land) etc. mentioned in paragraph 4 above), no other transfer/sale has taken place and no conveyance / registration is made by the said M/s.BBPL and accordingly the same cannot be taxed. The revenue could not point out a single material or paper seized during the search and seizure operations, which could justify the taxability of the land in question. There is no material on record to contradict the assertion of the assessee that the power of attorney given was not even acted upon and no development work was undertaken till the block assessment period. It is undisputed that the land was agricultural at the time of its purchase in the year 1987 to 1989. The land was duly reflected in the books of account of the appellant-assessee and has been shown as investment in the balance sheet filed prior to the search operations. Once the asset is declared to the department and no incriminating document found during the course of search operations, there can be no addition towards undisclosed income under the provisions of assessment for the block period and accordingly the assessee is liable to succeed on this ground. On facts of the case we are of the considered view that the general power of attorney

> confers a mere license in accordance with the terms of the power of attorney and cannot be said to be transfer. The land sold by the assessee, as detailed in para 4 above, has already been declared by the assessee and taxed under the head capital gains and since no other land has been sold out by the assessees or M/s.BBPL, the same cannot be taxed as adventure in the nature of trade under the head income from undisclosed sources and in this view of the matter the assessee succeeds. The action of the assessing officer in assessing under the head income from undisclosed sources of Rs.69,945 in the case of Mr. Mahendra K. Vira, Rs.16,795 in the case of Viraqsrinivas Builders Pvt. Ltd., 6,65,310 in the case of Mr.Meghji K. Vira is reversed."

3. In the light of the decision of this court in the case of CIT V/s. Vinod Dhanchand Ghodawat [247 ITR 448] the view of the tribunal cannot be faulted.

4. No substantial question of law arises in this appeal.

5. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)